

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VERNON WAYNE McNEAL,

Plaintiff,

2:05-cv-0441-GEB-EFB-P

vs.

EVERT, et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On September 24, 2007, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. The recommendation was for the dismissal of defendants Bitle and Evert, for plaintiff's failure to return the USM-285 forms necessary to effect service on said defendants. Plaintiff filed objections to the findings and recommendations. By order filed October 12, 2007, the court granted plaintiff an extension of time in which to submit documents for service on defendants Bitle and Evert and informed plaintiff that failure to provide new instructions for service upon

1 defendants within the time allowed or show good cause for such failure would result in the
2 court's September 24, 2007, findings and recommendations being submitted to the district judge.

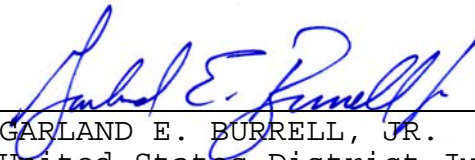
3 Plaintiff filed another motion for extension of time on October 24, 2007, stating
4 that he required additional time in which to examine discovery responses from defendants
5 because they were difficult to read and, presumably, because plaintiff sought to determine
6 whether they contained information useful to plaintiff in serving defendants Bitle and Evert.
7 That motion was granted by order filed October 26, 2007, which also contained notice to
8 plaintiff that after the expiration of the extension of time, the findings and recommendations of
9 September 24, 2007, would be sent on to the district judge if plaintiff again failed to provide
10 information for service defendants.¹

11 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-
12 304, this court has conducted a de novo review of this case. Having carefully reviewed the
13 entire file, the court finds the findings and recommendations to be supported by the record and
14 by proper analysis.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. The findings and recommendations filed September 24, 2007, are adopted in
17 full; and
18 2. Plaintiff's claims against defendants Bitle and Evert are dismissed.

19 Dated: January 11, 2008

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21 
22 GARLAND E. BURRELL, JR.
23 United States District Judge

24
25 ¹ Regardless of the court's continuance of the dates in the scheduling order (see docket #
26 59), it is Fed. R. Civ. P. Rule 4(m), not Rule 16, that applies. It has been more than two years
since this case was filed and 120 days have passed since the court found service proper for
defendants.